

A testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not exempt under section 501(c)(3) of the Code.

Advice has been requested whether the trust described below is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

A testamentary trust was established to make annual payments to charitable organizations exempt from Federal income tax under section 501(c)(3) of the Code and to use a fixed sum from its annual income for the perpetual care of the testator's burial lot.

Section 501(c)(3) of the Code provides for the exemption of organizations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 58-190, C.B. 1958-1, 15, states that the income of a trust established and designed for the purpose of furnishing perpetual care for a particular mausoleum crypt or burial lot inures to the benefit of the grantor and thus the organization was not exempt.

The principle stated in Revenue Ruling 58-190 is also applicable to sums paid for the perpetual care of a burial lot out of the annual income of the trust in the instant case. Such payment, therefore, constitutes inurement of a part of the trust's net earnings to the benefit of a private individual and the trust is being operated for the benefit of a private interest.

Accordingly, the trust is not exempt from Federal income tax under section 501(c)(3) of the Code. However, see section 642(c) of the Code for the provisions regarding a deduction by the trust in computing its gross income, for amounts paid or permanently set aside for a charitable purpose.

On the other hand, if the trustee obtains a court order directing the creation of a separate trust for the perpetual care of the burial lot, the charitable trust remaining may qualify for exemption from Federal income tax under section 501(c)(3) of the Code.